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Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Interim follow-up report under article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities*

A. Introduction

1. The present report was prepared pursuant to article 5 of the Optional Protocol to the Convention on the Rights of Persons with Disabilities, which states that the Committee shall hold closed meetings when examining communications under the Protocol and, after examining a communication, shall forward its suggestions and recommendations, if any, to the State party concerned and to the petitioner. The report is also prepared in line with rule 75, paragraph 7, of the rules of procedure of the Committee, which stipulates that the Special Rapporteur or working group shall report regularly to the Committee on follow-up activities, to ascertain the measures to be taken by States parties to give effect to the Committee's Views.

2. The present report sets out the information received by the Special Rapporteur for follow-up on Views between the sixteenth and seventeenth sessions pursuant to the Committee's rules of procedure, and the analyses and decisions adopted by the Committee during its seventeenth session. The assessment criteria were as follows:

Assessment criteria	
Action satisfactory	
A	Measures taken largely satisfactory
Action partially satisfactory	
B1	Substantive action taken, but additional information required
B2	Initial action taken, but additional action and information required
Action not satisfactory	
C1	Reply received but actions taken do not implement the Views/recommendations
C2	Reply received but not relevant to the Views/recommendations
No cooperation with the Committee	
D1	No reply to one or more recommendations or parts of recommendations
D2	No reply received following reminder(s)

* The report was adopted by the Committee at its seventeenth session (20 March–12 April 2017).

Assessment criteria	
Measures taken are contrary to the recommendations of the Committee	
E	The reply indicates that the measures taken go against the Views/recommendations of the Committee

B. Communications

1. Communication No. 1/2010, *Nyusti and Takács v. Hungary*

Views adopted:	16 April 2013.
First reply from the State party:	Due on 24 October 2013. Received on 13 December 2013. Analysed at the eleventh session (see CRPD/C/11/5).
Authors' comments (first set):	13 March 2014. Analysed at the eleventh session (see CRPD/C/11/5).
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3), with a deadline for comments of 7 November 2014.
Second reply from the State party:	Received on 29 June 2015 and 27 May 2016. Analysed at the sixteenth session (see CRPD/C/16/3).
Decision adopted at the sixteenth session:	Follow-up ongoing. A letter would be sent to the State party.
Actions taken:	On 6 June 2016, the Special Rapporteur for follow-up on Views sent a letter to the State party: (a) welcoming the compensation paid to the author; and (b) requesting updated information on the implementation of Committee's Views, the implementation of the four-year development programme for automatic teller machines and the outcome of the consultations initiated by the State party. Deadline for response: 2 August 2016.
Third reply from the State party:	Received on 3 August 2016.
Actions taken:	16 August 2016: acknowledgement of follow-up information to the State party. Transmittal to the author for comments. Deadline for response: 17 October 2016. 27 March 2017: first reminder sent to the author. Deadline for response: 26 May 2017. 19 January 2018: second reminder sent to the author. Deadline for response: 19 March 2018.
Decision of the Committee:	Follow-up ongoing. Awaiting author's comments.

2. Communication No. 4/2011, *Bujdosó et al. v. Hungary*

Views adopted:	9 September 2013.
First reply from the State party:	26 March 2014 (see CRPD/C/12/3).

Authors' comments (first and second sets):	5 May 2014 (see CRPD/C/12/3).
Decision adopted at the eleventh session:	Follow-up letter sent to the State party on 8 May 2014 (see CRPD/C/12/3). Deadline for comments: 7 November 2014.
Second reply from the State party:	8 July 2014 (see CRPD/C/12/3).
Authors' comments (third set):	25 August 2015.
Third reply from the State party:	29 June 2015 (see CRPD/C/15/3).
Decision adopted at the fifteenth session:	Follow-up ongoing. Follow-up letter to the State party on 14 June 2016 (see CRPD/C/15/3), with a deadline for comments of 9 August 2016.
Fourth reply from the State party:	Received on 12 August 2016 (see CRPD/C/16/3).
Authors' comments (fourth set):	17 August 2016 (see CRPD/C/16/3).
Action taken:	Follow-up letter sent to the State party on 18 November 2016. The Committee welcomed the information provided about the payment of the legal costs to the authors. Nonetheless, the Committee expressed its regret concerning the State party's statement that it did not plan to amend or repeal article XXXVI of the Constitution, as recommended in the Committee's Views (para. 10 (b) (i)). In view of the above, the Committee requested the State party to provide information on: (a) the measures taken to ensure that legislation on supported decision-making and the right to vote complied fully with the Convention and the Committee's Views in *Budjoso et al. v. Hungary*; (b) the measures taken to ensure the participation of civil society organizations in the working group of the Joint Ministerial Disability Commission, and (c) the progress made in the payment of the compensation determined in June 2015 and on the measures taken to ensure that the compensation paid can be managed by the authors in compliance with their own will and decisions. Deadline for submission: 16 January 2017.
Fifth reply from the State party:	Received on 17 January 2017. (a) On the measures taken to ensure the full compatibility of the legislation on supported decision-making and the right to vote with the Convention and the Committee's Views: The State party reiterates that article XXIII of the Constitution is clear: it grants the courts the right to disenfranchise a given person, stating that those disenfranchised by a given court owing to limited mental capacity shall not have the right to vote and to be voted for. The State party further considers that act XXXVI of 2013 on the electoral procedure is in line with the Constitution when it states that the courts have to decide whether they will disenfranchise persons who have been put under capacity-limiting or capacity-excluding guardianship. If a given court does not disenfranchise a given person, he or she has the right to vote and to be voted for, and to exercise those rights in person. The State party reiterates that it does not plan to amend or repeal these constitutional provisions. (b) On the participation of civil society organizations in

the work of the working group of the Joint Ministerial Disability Commission:

The State party informs that the interministerial committee on disability launched a working group in 2016 through the adoption of Decree 1/2016. The working group is in charge of reviewing judicial practice concerning supported decision-making and suffrage, with the aim of introducing amendments to the relevant judicial procedure.

Civil society has taken part in the process through the participation of the Hungarian Association for Persons with Intellectual Disabilities and an expert employed by the National Federation of Associations of Persons with Disabilities. The working group is made up of civil society organizations and representatives of the Ministry of Justice, the Ministry of Human Capacities, the National Office for the Judiciary and the Office of the Commissioner for Fundamental Rights.

The State party also reports that a training programme for judges and a training programme for health-care professionals have been set up respectively by the Public Foundation for Equal Opportunities for Persons with Disabilities and the Ministry of Human Capacities. Both training programs have now been finalized.

(c) On the payment of the compensation determined in June 2015 and the measures taken to ensure that the compensation paid can be managed by the authors in compliance with their own will and decisions:

The process of compensating the complainants is ongoing. A source of financing has been identified. When the Ministry of Human Capacities contacted the legal representative of the authors at the beginning of the compensation procedure, he stated that his mandate only covered the procedure before the Committee. The State party highlights the fact that the authors are free to contact the Ministry of Human Capacities whenever necessary, as they have done on various opportunities.

Authors' comments (fifth set):

Date received: 10 March 2017.

(a) On the legislation on the right to vote:

The authors consider that the State party's reply again reflects a clear refusal to implement the Committee's recommendations in their case. They agree that the constitutional framework is unambiguous, but consider that the reasons for restricting a person's right to vote remain unclear: the law is vague and there is no psychiatric or other forensic protocol detailing what forensic experts should examine when they are asked to determine whether a person is able to vote. Under these conditions, the authors consider that any limitation of the right to vote is arbitrary.

(b) On civil society's participation in the working group of the inter-ministerial committee on disability:

The authors argue that Decree 1/2016, as referred to by the State party, is not publicly available, no public information is available on the working group and its activities, its reports are not public and there is no information on the "expert"

	referred to by the State party. Even though they have frequently communicated with the Ministry of Human Capacities regarding the implementation of the Views, the authors only learned about the creation of the working group through the State party's follow-up reply to the Committee. The authors argue that the invitation of a few carefully selected individuals to participate in the working group does not guarantee the participation of civil society in the project and its adequate oversight. (c) On compensation: The authors report that, more than three years after the adoption of the Committee's Views and more than one and a half years after the adoption of the decree awarding them compensation, they have yet to be compensated. As to the State party's statement that the mandate of the author's counsel only concerned the procedure before the Committee, the authors report that the Ministry did not recognize the validity of the power of attorney they had given to their representative for the proceedings under domestic law, limiting its validity to the procedure before the Committee. The authors submit that the power of attorney was given for the whole procedure, including the implementation phase and, therefore, the compensation proceedings.
Meeting with the Permanent Mission:	On 6 April 2017, during the seventeenth session, a confidential meeting was held between the Special Rapporteur on follow-up to Views and a representative of the Permanent Mission of Hungary to the United Nations Office and other international organizations in Geneva to clarify some issues as to the written replies provided.
Decision of the Committee:	[D1]: Follow-up ongoing: The Committee decided to send a letter to the State party requesting updated information regarding the payment of compensation to the authors and reiterating its previous questions and recommendations regarding the non-implementation of the Committee's recommendations.

3. Communication No. 21/2014, *F. v. Austria*

Views adopted:	21 August 2015.
Deadline for first reply from the State party:	9 March 2016.
First reply from the State party:	Received on 24 February 2016 (see CRPD/C/16/3).
Author's comments (first set):	Received on 22 June 2016 (see CRPD/C/16/3).
Action taken:	The Special Rapporteur sent a letter to the State party recalling the Committee's recommendation concerning compensation and requesting additional information on the measures taken to provide accessible information about public transport for persons with visual impairment.

Second reply from the State party: Received on 24 January 2017.

The State party takes note of the comments contained in the Special Rapporteur's letter and comments the following:

(a) The measures taken by the State party to disseminate the Committee's Views in accessible format:

The Committee's Views have been translated into German and published on the websites of the Federal Chancellery and the Federal Ministry of Labour, Social Affairs and Consumer Protection in a format accessible to blind and partially sighted persons. In addition, these websites are linked to the website of the Office of the United Nations High Commissioner for Human Rights, where the Views are published.

(b) The measures taken by the State party to comply with the Committee's Views to provide adequate compensation to the author for the legal costs incurred during domestic proceedings and the costs incurred in filing the present communication:

The State party reiterates that, as a matter of principle, it does not provide compensation to an applicant in treaty body procedures for costs incurred in the filing of communications. The costs incurred by the author on the occasion of the domestic court proceedings gave rise to a final decision of an independent Austrian court. Austria cannot, therefore, comply with this recommendation.

(c) Measures taken to remedy the lack of accessibility to the information visually available for persons with visual impairment for all lines of the tram network:

The Linz Linien GmbH, which runs the public transport network in Linz, will continue its ongoing efforts to further improve accessibility for persons with disabilities. This is being done in close cooperation with the Austrian Federation of the Blind and Partially Sighted.

All Linz Linien GmbH ticket machines are currently being equipped with "text to speak" functions. Moreover, the "Qando" smartphone application — which provides information on Austrian public transport schedules — has recently been optimized for use by blind and partially sighted persons. Accessibility smartphone applications are becoming increasingly popular, in addition to the timetable information system presently in use (Digital Voice Output).

Digital Voice Output was not installed at all tram stations following complaints by residents about the potential for noise pollution, especially at night. All relevant decisions were taken in close cooperation with organizations of persons with disabilities.

The State party highlights that Linz Linien GmbH was the first public transport company in Austria to allow persons with disabilities to be accompanied by another person free of charge.

(d) Measures taken to guarantee that future Austrian transport networks comply with the principle of universal design:

The Regulation of the Federal Minister competent for public

transport regarding the building and operation of tramways — Federal Law Gazette II 76/2000, as amended — is currently being revised. Amendments will include new wording relating to accessibility and up-to-date technical indications prepared in close cooperation with the working group for rehabilitation of the Austrian Federation of the Blind and Partially Sighted. An implementing decree will expand on these technical indications and adapt them to new developments.

In order to promote full accessibility of the Austrian rail network, in 2006, Austrian Federal Railways prepared a step-by-step plan on accessibility. By the end of 2015, 75 per cent of Austria's railway passengers benefited from railway stations fully in conformity with the plan's accessibility standards. By 2025, accessibility will be provided for at least 90 per cent of all passengers. To that end, almost 180 railway stations have already been adapted. Accessibility is also being improved through the acquisition of new accessible trains (most recently, "Cityjet" trains).

The State party further indicates that its federal, regional and local government authorities focus in particular on accessibility as a part of public procurement proceedings, in accordance with European Union public procurement directives.

Action taken: State party's follow-up observations transmitted to the author for comments with a deadline of 13 April 2017.

Author's comments (second set): Received on 27 January 2017.

The author submits the following information:

(a) As to the measures taken to remedy the lack of accessibility to the information visually available for persons with visual impairment, for all tram network lines:

The author argues that he does not have any information on the involvement of the Austrian Federation of the Blind and Partially Sighted in work to improve accessibility for persons with disabilities.

He confirms that the ticket machines are equipped with a "text to speech" function, but argues that this system is not adapted to cope with a high level of noise, especially in rush hour or when trains are arriving or departing.

Tramway line No. 2 operates outside the boundaries of the city of Linz. Single tickets can only be purchased within those boundaries. The accessible "text to speech" function is, therefore, not available for the whole tram line.

As to the possibility to allow persons with disabilities to be accompanied by another person free of charge, the author argues that this is certainly an advantage for individuals, but that it does not enable persons with disabilities to use the tram lines without the help of others.

(d) As to the measures taken to guarantee that future Austrian transport networks comply with the principle of universal design:

The author confirms that the regulation of the Federal Minister competent for public transport regarding the building and operation of tramways — Federal Law Gazette II

	76/2000, as amended — is currently being revised. However, he considers that the draft regulation does not comply with the Views of the Committee because article 5 (a) of the draft provides that persons with limited mobility should have access without any particular obstacles. Persons with other kinds of disabilities — such as mental, intellectual or sensory impairments — are excluded. Therefore, the draft regulation does not provide any improvement for the author. According to Austrian Federal Railways accessibility standards, accessibility is to be provided at stations according to the number of passengers concerned. Following an evaluation of the accessibility plan, it was found that many trains were not accessible and there were no plans to adapt them. Accessible train stations are necessary for accessible transport, but they remain of limited use if they not accompanied by accessible trains.
Decision of the Committee:	[B2]: Follow-up ongoing. Initial action taken, but additional action and information required. A letter will be sent to the State party highlighting that the Committee welcomes the progress made and requesting the State party to ensure that ongoing reforms include measures necessary to guarantee accessibility for all blind persons and persons with visual impairment, in compliance with the Committee's Views.